

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-01047-CKK**

PUBLIC CITIZEN, INC. v. UNITED STATES DEPARTMENT
OF EDUCATION

Assigned to: Judge Colleen Kollar-Kotelly

Cause: 05:552 Freedom of Information Act

Date Filed: 05/03/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

PUBLIC CITIZEN, INC.

represented by **Patrick D. Llewellyn**
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V.

Defendant

**UNITED STATES DEPARTMENT OF
EDUCATION**

represented by **Jason Todd Cohen**
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Date Filed	#	Docket Text
05/03/2018	<u>1</u>	COMPLAINT against UNITED STATES DEPARTMENT OF EDUCATION (Filing fee \$ 400 receipt number 0090-5459439) filed by PUBLIC CITIZEN, INC.. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(Pulver, Adam) (Attachment 1 replaced on 5/14/2018) (zmd). (Entered: 05/03/2018)
05/03/2018	<u>2</u>	NOTICE of Appearance by Patrick D. Llewellyn on behalf of PUBLIC CITIZEN, INC. (Llewellyn, Patrick) (Entered: 05/03/2018)
05/03/2018	<u>3</u>	Corporate Disclosure Statement by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 05/03/2018)
05/03/2018		Case Assigned to Judge Colleen Kollar-Kotelly. (zmd) (Entered: 05/04/2018)

05/04/2018	<u>4</u>	SUMMONS (3) Issued Electronically as to UNITED STATES DEPARTMENT OF EDUCATION, U.S. Attorney and U.S. Attorney General (tth) (Additional attachment(s) added on 5/4/2018: # <u>1</u> Notice and Consent) (zmd). (Entered: 05/04/2018)
05/07/2018	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/7/2018. Answer due for ALL FEDERAL DEFENDANTS by 6/6/2018. (Llewellyn, Patrick) (Entered: 05/07/2018)
05/07/2018	<u>6</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 05/07/2018. (DM) (Entered: 05/07/2018)
06/06/2018	<u>7</u>	NOTICE of Appearance by Jason Todd Cohen on behalf of UNITED STATES DEPARTMENT OF EDUCATION (Cohen, Jason) (Entered: 06/06/2018)
06/06/2018	<u>8</u>	ANSWER to Complaint by UNITED STATES DEPARTMENT OF EDUCATION.(Cohen, Jason) (Entered: 06/06/2018)
06/07/2018	<u>9</u>	ORDER. The parties shall MEET AND CONFER and file a Joint Status Report by no later than JUNE 27, 2018. Signed by Judge Colleen Kollar-Kotelly on 6/7/2018. (lcckk3) (Entered: 06/07/2018)
06/07/2018		Set/Reset Deadlines: Joint Status Report due by 6/27/2018. (dot) (Entered: 06/08/2018)
06/27/2018	<u>10</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 06/27/2018)
06/28/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>10</u> Joint Status Report. The parties represent that Defendant has completed some searches for records responsive to Plaintiff's FOIA request and is in the process of completing others and reviewing the records located. Defendant represents that it will provide responsive records from at least one of its offices, the Office of Communication and Outreach ("OCO") by July 6, 2018. The parties suggest that they file another Joint Status Report by July 18, 2018. Plaintiff additionally requests that the Court order Defendants to produce the responsive records identified by the OCO by July 6, 2018 and to set other deadlines for meeting and conferring and for providing Plaintiff information. The Court will not order Defendant to adhere to any particular deadlines at this very early stage in the case. The Court expects Defendant to be diligently processing Plaintiff's FOIA request. Defendant represents that it will produce certain records by July 6, 2018, and the Court expects Defendant to do so and also to produce any responsive records it finds on a rolling basis as possible. The Court of course also expects the parties to continue to meet and confer. The parties are ORDERED to file a further Joint Status Report by no later than JULY 18, 2018, updating the Court on the status of Defendant's processing of Plaintiff's FOIA request. Signed by Judge Colleen Kollar-Kotelly on 6/28/2018. (lcckk3) (Entered: 06/28/2018)
06/28/2018		Set/Reset Deadlines: Joint Status Report due by 7/18/2018. (kt) (Entered: 06/28/2018)
07/18/2018	<u>11</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 07/18/2018)
07/19/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>11</u> Joint Status Report. The parties represent that Defendant has already produced some records to Plaintiff, and anticipates producing all responsive records by August 6, 2018. The parties accordingly propose filing another Joint Status Report by no later than August 13, 2018. The parties are ORDERED to file a further Joint Status Report by no later than AUGUST 13, 2018, updating the Court on the status of Defendant's processing of Plaintiff's FOIA request. Signed by Judge Colleen Kollar-Kotelly on 7/19/2018. (lcckk3) (Entered: 07/19/2018)
07/20/2018		Set/Reset Deadlines: Joint Status Report due by 8/13/2018, updating the Court on the status of Defendant's processing of Plaintiff's FOIA request. (dot) (Entered: 07/20/2018)

08/13/2018	<u>12</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 08/13/2018)
08/13/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>12</u> Joint Status Report. The parties represent that Defendant has now finished producing responsive records to Plaintiff, and that those records contain redactions. The parties are in the process of discussing the redactions in an attempt to resolve this matter without need for further litigation. The parties accordingly propose filing another Joint Status Report by no later than September 13, 2018. The parties are ORDERED to file a further Joint Status Report by no later than SEPTEMBER 13, 2018, updating the Court on the status of their discussions and the need for further litigation. Signed by Judge Colleen Kollar-Kotelly on 8/13/2018. (lcckk3) (Entered: 08/13/2018)
08/13/2018		Set/Reset Deadlines: Joint Status Report due by 9/13/2018, updating the Court on the status of their discussions and the need for further litigation. (dot) (Entered: 08/13/2018)
09/13/2018	<u>13</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 09/13/2018)
09/14/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>13</u> Joint Status Report. The parties represent that Defendant has completed its production of responsive records, with redactions. The Plaintiff has identified approximately forty redactions as to which it seeks further information. Defendant will provide a response to this request by September 19, 2018. The Court ORDERS the parties to file a Joint Status Report by OCTOBER 3, 2018, updating the Court on the progress that Defendant has made on responding to Plaintiff's FOIA request. The parties note that if any outstanding issues are remaining, the parties' Joint Status Report will propose a schedule for cross-motions for summary judgment. Signed by Judge Colleen Kollar-Kotelly on 09-14-2018. (lcckk3) (Entered: 09/14/2018)
09/14/2018		Set/Reset Deadlines: Joint Status Report due by 10/3/2018, updating the Court on the progress that Defendant has made on responding to Plaintiff's FOIA request. (dot) (Entered: 09/19/2018)
10/01/2018	<u>14</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 10/01/2018)
10/01/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>14</u> Joint Status Report. The parties represent that Defendant has completed its production of responsive records, with redactions. Plaintiff has identified twelve remaining issues pertaining to redactions in the documents provided by Defendant. Defendant will provide a response to these issues by October 19, 2018. The Court ORDERS the parties to file a Joint Status Report by OCTOBER 26, 2018, updating the Court on the progress that Defendant has made on responding to Plaintiff's FOIA requests. The parties note that if any outstanding issues are remaining, the parties' Joint Status Report will propose a schedule for cross-motions for summary judgment. Signed by Judge Colleen Kollar-Kotelly on 10-1-2018. (lcckk3) (Entered: 10/01/2018)
10/01/2018		Set/Reset Deadlines: Defendant's Response due by 10/19/2018. Status Report due by 10/26/2018, updating the Court on the progress that Defendant has made on responding to Plaintiff's FOIA requests. (dot) (Entered: 10/02/2018)
10/26/2018	<u>15</u>	Joint STATUS REPORT by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 10/26/2018)
10/26/2018		MINUTE ORDER: The Court is in receipt of the parties' <u>15</u> Joint Status Report. The parties represent that Defendant has completed its production of responsive records, with redactions. However, Plaintiff contends that Defendant's production remains insufficient as to (1) redactions on approximately 16 pages of emails, and (2) the failure to produce final versions of remarks delivered by the Secretary, an agenda for the October 2, 2017 event, and a PowerPoint presentation to be delivered at that event. The parties have jointly proposed a briefing schedule for cross-motions for summary judgment to address the remaining issues. The Court ORDERS Defendant to file a motion for summary judgment and a Vaughn index by DECEMBER 14, 2018 and Plaintiff to file an opposition and cross-motion for summary judgment by JANUARY 14, 2019. The Court further ORDERS Defendant to file a reply and opposition by FEBRUARY 8, 2019 and Plaintiff to file a reply by FEBRUARY 22, 2019. Signed by

		Judge Colleen Kollar-Kotelly on 10/26/2018.(lcckk3) (Entered: 10/26/2018)
10/26/2018		Set/Reset Deadlines: Plaintiff's Cross Motion due by 1/14/2019. Response to Cross Motion due by 2/8/2019. Reply to Cross Motion due by 2/22/2019. Summary Judgment Motion due by 12/14/2018. Response to Motion for Summary Judgment due by 1/14/2019. Reply to Motion for Summary Judgment due by 2/8/2019. Vaughn Index due by 12/14/2018. (dot) (Entered: 10/29/2018)
12/14/2018	<u>16</u>	MOTION for Summary Judgment by UNITED STATES DEPARTMENT OF EDUCATION (Attachments: # <u>1</u> Declaration of Jill Siegelbaum, # <u>2</u> Text of Proposed Order)(Cohen, Jason) (Entered: 12/14/2018)
01/14/2019	<u>17</u>	Memorandum in opposition to re <u>16</u> MOTION for Summary Judgment filed by PUBLIC CITIZEN, INC.. (Attachments: # <u>1</u> Declaration of Adam R. Pulver, # <u>2</u> Text of Proposed Order)(Pulver, Adam) (Entered: 01/14/2019)
01/14/2019	<u>18</u>	Cross MOTION for Summary Judgment by PUBLIC CITIZEN, INC. (Attachments: # <u>1</u> Declaration of Adam R. Pulver, # <u>2</u> Text of Proposed Order)(Pulver, Adam) (Entered: 01/14/2019)
02/07/2019	<u>19</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION for Summary Judgment , <u>18</u> Cross MOTION for Summary Judgment by UNITED STATES DEPARTMENT OF EDUCATION (Attachments: # <u>1</u> Text of Proposed Order)(Cohen, Jason) (Entered: 02/07/2019)
02/07/2019	<u>20</u>	Amended MOTION for Extension of Time to File Response/Reply as to <u>16</u> MOTION for Summary Judgment , <u>18</u> Cross MOTION for Summary Judgment by UNITED STATES DEPARTMENT OF EDUCATION (Attachments: # <u>1</u> Text of Proposed Order)(Cohen, Jason) (Entered: 02/07/2019)
02/07/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>20</u> Corrected Unopposed Motion for Enlargement of Time. Currently Defendant must file its Reply in Support of Defendant's Motion for Summary Judgment and Opposition to Plaintiffs' Cross-Motion for Summary Judgment on February 8, 2019 and Plaintiff must file its Reply in Support of Plaintiff's Cross-Motion for Summary Judgment by February 22, 2019. Due to the lapse in appropriations from December 21, 2018 to January 25, 2019, the government's attorney has a backlog of cases and requires additional time to properly prepare its reply and opposition. Defendant's motion is GRANTED. Defendant's Reply in Support of Defendant's Motion for Summary Judgment and Opposition to Plaintiff's Cross-Motion for Summary Judgment is due FEBRUARY 22, 2019 and Plaintiff's Reply in Support of Plaintiff's Cross-Motion for Summary Judgment is due MARCH 15, 2019. Signed by Judge Colleen Kollar-Kotelly on 2/7/2019. (lcckk3) (Entered: 02/07/2019)
02/07/2019		Set/Reset Deadlines: Defendant's Reply to Motion for Summary Judgment <u>16</u> due by 2/22/2019. Defendant's Response to Cross Motion for Summary Judgment <u>18</u> due by 2/22/2019. Plaintiff's Reply to Cross Motion for Summary Judgment <u>18</u> due by 3/15/2019. (dot) (Entered: 02/08/2019)
02/22/2019	<u>21</u>	REPLY to opposition to motion re <u>16</u> MOTION for Summary Judgment filed by UNITED STATES DEPARTMENT OF EDUCATION. (Attachments: # <u>1</u> Defendant's Response to Plaintiff's Statement of Additional Material Facts Not In Genuine Dispute, # <u>2</u> Supplemental Declaration of Jill Siegelbaum)(Cohen, Jason) (Entered: 02/22/2019)
02/22/2019	<u>22</u>	Memorandum in opposition to re <u>18</u> Cross MOTION for Summary Judgment (<i>Duplicate Filing of ECF No. 21</i>) filed by UNITED STATES DEPARTMENT OF EDUCATION. (Attachments: # <u>1</u> Defendant's Response to Plaintiff's Statement of Additional Material Facts Not In Genuine Dispute, # <u>2</u> Supplemental Declaration of Jill Siegelbaum)(Cohen, Jason) (Entered: 02/22/2019)
03/15/2019	<u>23</u>	REPLY to opposition to motion re <u>18</u> Cross MOTION for Summary Judgment filed by PUBLIC CITIZEN, INC.. (Pulver, Adam) (Entered: 03/15/2019)
04/01/2019		MINUTE ORDER: The Court finds that in camera review of the documents relating to Plaintiff's FOIA request is necessary to make a responsible de novo determination on the claims of exemption. See <i>Larson v. Dept of State</i> , 565 F.3d 857, 869–70 (D.C. Cir. 2009). The Court ORDERS Defendant to present the responsive records from Plaintiff's FOIA request to the Court for in camera review. Defendant may furnish to

		the Court the letters ex parte and under seal for in camera review, or Defendant may contact the Court suggesting another method of delivering the letters for the Court's in camera review. Defendant is ORDERED to provide the Court with the documents for in camera review by APRIL 5, 2019. Signed by Judge Colleen Kollar-Kotelly on 4/1/2019. (lcckk3) (Entered: 04/01/2019)
04/01/2019		Set/Reset Deadlines: Defendant is ORDERED to provide the Court with the documents for in camera review by APRIL 5, 2019. (dot) (Entered: 04/02/2019)
04/05/2019	<u>24</u>	NOTICE of Compliance by UNITED STATES DEPARTMENT OF EDUCATION (Cohen, Jason) (Entered: 04/05/2019)
04/12/2019		MINUTE ORDER. The Court has reviewed the documents provided by Defendant for in camera review. The Court has questions regarding the redactions on document OS 314 as well as the first two redactions on document OCO 8. It would appear to the Court that these redactions would not fall under the deliberative process privilege as these redactions do not appear to be pre-decisional. See In re Sealed Case, 121 F.3d 729, 737 (D.C. Cir. 1997) ("The deliberative process privilege does not shield documents that simply state or explain a decision the government has already made."). The Court ORDERS Defendant to file ex parte under seal an addendum to its motion explaining why these redactions are or are not pre-decisional and covered by the deliberative process privilege by APRIL 22, 2019. Signed by Judge Colleen Kollar-Kotelly on 4/12/2019. (lcckk3) (Entered: 04/12/2019)
04/12/2019	<u>25</u>	MOTION for Extension of Time to <i>Comply with Court's Order</i> by UNITED STATES DEPARTMENT OF EDUCATION (Cohen, Jason) (Entered: 04/12/2019)
04/12/2019		MINUTE ORDER: The Court is in receipt of Defendant's <u>25</u> Motion for Enlargement of Time to Comply with Court's Order. Currently, Defendant's addendum to its motion is due April 22, 2019. Defendant requests a two week extension because Defense counsel will be out of the office for approximately one week and has many other litigation commitments pending. Defendant reports that Plaintiff would agree to only a one week extension. Defendant's motion is GRANTED. The Court finds that an extension of two weeks is in the interests of justice as it will allow time for Defendant to examine the issue and provide a cogent argument. Defendant's Addendum to its Motion is due MAY 6, 2019. Signed by Judge Colleen Kollar-Kotelly on 4/12/2019. (lcckk3) (Entered: 04/12/2019)